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OFFICE OF PETITIONS

In re Patent of Suzuki et al. :
Patent No. 6,561,716 :
Issue Date: May 13, 2003 : REQUEST FOR INFORMATION
Application No. 09/762,319 :
Filed: February 6, 2001 :
Attorney Docket No. M1596-232/ 4400/800-
001

A petition under 37 CFR 1.378(e) to accept the delayed payment of a maintenance fees for the above-identified patent was filed on July 27, 2011 and supplemented on October 17, 2011.

Petitioner should submit the requested items within TWO MONTHS of the mailing date of this letter. Extensions of time may not be obtained. The response to this Requirement for Information should include a cover letter entitled "Response to Request for Information." The failure to file a reply to the instant Request for Information will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

In the instant petition, assignee, Kabushiki Kaisha Somic Ishikawa, asserts that the delay in payment of the 3 ½ year maintenance fee was unavoidable because their maintenance fee service, MDC, failed to pay the maintenance fee, despite receiving "PAY" instructions from their attorneys, Darby & Darby.

Petitioner has provided an October 10, 2011 email from Jennifer Marlett, an employee of Thomson IP Management Services, the successor to MDC, to Melvin Garner that states, "... Upon further research, it has been identified your "PAY" instructions were not processed correctly due to human error.... Please let me know if further documentation is required...."

A general assertion of human error does not establish unavoidable delay. Specific details describing the error and the person who committed the error must be provided. Further documentation from MDC/Thomson IP Management Services is required.

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that: (1) the error was the cause of the delay at issue; (2) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; (3) and the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care. See MPEP 711.03(c)(III)(C)(2).

An adequate showing requires statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts, as they know them. Petitioner must supply a thorough explanation of the docketing and call-up system in use and must identify the type of records kept and the person responsible for the maintenance of the system. This showing must include copies of mail ledger, docket sheets, and such other records as may exist which would substantiate an error in docketing, and include an indication as to why the system failed in this instance to provide adequate notice that the maintenance fee should have been paid.

Petitioner must also supply information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By Hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

By internet: EFS-Web
 www.uspto.gov/ebc/efs_help.html
 (for help using EFS-Web call the
 Patent Electronic Business Center
 at (866) 217-9197)

Telephone inquiries should be directed to the undersigned at (571) 272-3230.



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Office of Petitions